

10-28-1988

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City Club of Portland (Portland, Or.)

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City Club of Portland (Portland, Or.), "Report on State Measure 6: Indoor Clean Air Law Revisions Banning Public Smoking" (1988).
City Club of Portland. Paper 435.
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Report On
State Measure 6
Indoor Clean Air Law Revisions
Banning Public Smoking

Published in
City Club of Portland Bulletin
Vol. 69, No. 22
October 28, 1988

This report includes both Majority and Minority recommendations. None of the report recommendations will become the official position of the City Club until a vote of the membership is taken on October 28, 1988. The outcome of the membership vote will be reported in the City Club Bulletin (Vol. 69, No. 24) dated November 11, 1988.

Report on
State Measure 6
Indoor Clean Air Law Revisions Banning Public Smoking

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

The Oregon Indoor Clean Air Act mandates designated smoking areas in many public places. Ballot Measure 6 would amend the law to prohibit designated smoking areas, with some exceptions, and to ban smoking in public places, including most work places.

Measure 6, placed on the ballot by initiative petition, would amend the definition of a "public place" to include work areas, factories, office buildings, transport terminals, hospitals and other places not currently covered. Exceptions would exist for cocktail lounges and taverns, retail tobacco stores, hotel and motel sleeping rooms which are not designated as non-smoking areas by the proprietor, and home work places which are not used by the public.

Under the proposed law, anyone in charge of a public place would be responsible for asking any smoker to extinguish the smoking instrument or leave the premises. Signs would be required in public places stating that smoking is not permitted.

The measure would make it unlawful for an employer to discriminate against an employee who requests compliance with this law or who reports a violation. The Oregon State Health Division and local health departments would be responsible for enforcement of the amended law. Violation would be punishable by a fine of up to \$250.

The proposed amendments would become effective 30 days after approval by voters.

The measure, as it will appear on the ballot, is as follows:

Question: Shall law restricting public smoking be expanded to forbid smoking in most indoor, enclosed work places and places serving the public?

Explanation: Revises current Indoor Clean Air law that forbids smoking areas in some public places. Forbids smoking areas in most indoor, enclosed workplaces and in most places serving public. Excepts bars, hotel rooms, tobacco shops, and home workplaces not used by public. Requires person in charge of place where law applies to ask smoker to stop smoking or leave. Requires Health Division to enforce law. Forbids discrimination against workers reporting violations or requesting enforcement of law.

II. BACKGROUND

A. History of Oregon Indoor Clean Air Act

In 1981, the Oregon Legislature passed the Oregon Indoor Clean Air Act, which required that smoking be prohibited, or limited to designated smoking areas, in certain public places. A public place was defined by the law as "an enclosed indoor area open to and frequented by the public." Specifically included were such places as restaurants, retail stores, banks and schools. Within 2 1/2 years, general compliance with the new law was achieved. Smoking bans, or restrictions of smoking to designated areas, have become commonplace in most restaurants and public buildings, and are generally accepted by Oregonians.

Bills introduced in the 1985 and 1987 sessions of the Oregon Legislature would have banned smoking in certain common areas of work places and required employers to develop written smoking policies under which health concerns of the non-smoker would be prevalent. These proposals did not apply to work places where everyone smokes or to homes. None of these bills were adopted.

Measure 6 would eliminate the use of designated smoking areas and extend the scope of the law to more public places, particularly work places. The measure would prohibit smoking in all places serving the public or places occupied by workers who are governed by state worker's compensation laws. This includes home work places that are open to the public, however, it is unclear whether the entire home or only a portion of it would be covered under this measure.

Passage of the measure would give Oregon the most restrictive laws on smoking of any state in the nation.

B. Public Opinion

A 1986 Gallup Poll found that a growing number of employees felt strongly about not having to be exposed to

smoke. That same poll found that 80% of the non-smokers and 76% of smokers believed that employers should assign certain areas for smoking. Only 12% of the non-smokers and 4% of the smokers supported a total ban on smoking in the workplace.¹

Adoption of smoking policies has become common in 80s. Most company policies restrict smoking in common areas and segregate smokers from non-smokers.² A 1986 survey of private employers showed 36% had policies on employee smoking and another 21% had policies under consideration. Of the existing policies, 65% had been introduced within the previous two years.³

C. Recent Research on Health Impacts of Involuntary Smoking.

Measure 6 is intended to address the issue of inhalation of tobacco smoke by individuals other than the smoker, a process known as "involuntary smoking." This indoor atmospheric smoke is sometimes called environmental tobacco smoke. Research on the health impacts of involuntary smoking has been developed in recent years, most of it since passage of the 1981 Oregon law. This new research establishes links between involuntary smoking and an increased risk of cancer and other diseases. Your Committee found considerable disagreement over the conclusions to be drawn from this data. Conclusions reached by different parties were often contradictory.

The most frequently cited report is one published in 1986 by the Surgeon General of the United States entitled "The Health Consequences of Involuntary Smoking." The Surgeon General's report is a compilation and review of current research on the subject. The report's introductory overview presents three conclusions:

- 1) Involuntary smoking is a cause of disease, including lung cancer, in healthy nonsmokers.⁴
- 2) The children of parents who smoke compared with the children of non-smoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lung matures.

¹ "Banning Worksite Smoking," American Journal of Public Health, August 1986, p. 957.

² "Clearing the Air," Oregon Business, November 1984, p. 61.

³ "The Smoke Around You," American Cancer Society Pamphlet.

⁴ The conclusion of the Surgeon General's report that involuntary smoking is a cause of lung cancer is based on inference from incomplete epidemiologic statistics. A causal relationship has not been established experimentally.

3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke.

In 1986, the National Academy of Sciences concluded from a review of available data, that involuntary smoking caused:

- a. Increased risk of respiratory infection among young children, particularly infants of smokers.
- b. Increased risk of lung cancer -- possibly as much as 30% -- for non-smoking spouses of smokers.
- c. An acute discomfort for many people because of eye irritation and annoyance of persistent odor.

Research results are just beginning to accumulate. The Surgeon General's report states that its conclusions are based on incomplete data, and that much more study is needed. Estimates of the number of deaths attributable to involuntary smoking vary widely. Nearly all of the data is based on studies done in the home environment. It is not known how this correlates to work places and other public building areas which are often larger and have better ventilation.

The increased risk of developing lung cancer in non-smokers was based on 13 epidemiologic studies in the Surgeon General's report. Six studies showed statistically significant increased risks associated with a spouse's smoking. Only two of the studies attempted to take into account total exposure to involuntary smoking -- rather than exposure in the home. In fact, the workplace was not even considered in the early studies. Some later case-control studies provided some information, but the data were limited and inconclusive.

III. ARGUMENTS ADVANCED BY PROPONENTS

The following arguments were presented by proponents of the measure:

1. Non-smokers are entitled to breathe smoke-free indoor air. The measure protects the rights of non-smokers.
2. The measure is not an anti-smoking measure, it is a public health measure. Government has an obligation to protect people from preventable public health risks. Tobacco smoke should be regulated just as other hazardous air pollutants are regulated.
3. The 1986 Surgeon General's report documents a growing body of scientific data showing that involuntary smoking is a cause of disease in healthy non-smokers.

4. The 1981 Indoor Clean Air Act did not address the health effects of involuntary smoking. Based on new data, it is time to update the law.
5. The 1981 Act did not address smoking in the work place, even though the work place is where many people spend a great deal of their time.
6. Designated non-smoking areas have not reduced the health risks for non-smokers. Air contaminants from tobacco smoke migrate from smoking areas to non-smoking areas through open passages and central ventilation systems.
7. The measure will yield economic benefits for business through improved worker productivity, less lost work time, reduced janitorial and maintenance expenses, and potentially lower health care costs.
8. The measure will improve worker productivity by reducing the morale problems that are currently associated with conflicts over cigarette smoke.
9. The measure will be largely self-enforcing, with no significant public expenditures required.
10. The measure will reinforce non-smoking as normative social behavior.

IV. ARGUMENTS ADVANCED BY OPPONENTS

The following arguments were presented by opponents of the measure:

1. The measure represents unfair and unnecessary interference by government with the rights of individuals. The measure will discriminate against Oregonians who smoke.
2. The emphasis on public health concerns masks the serious negative economic and business impacts of such a radical measure.
3. The evidence is not yet conclusive regarding the health impacts of involuntary smoking. This issue should be determined by the scientific community, not at the ballot box.
4. The existing Oregon Indoor Clean Air Act is accepted by Oregonians, and is working well in providing designated areas for smokers and non-smokers.
5. Smoking policies for private businesses should continue to be negotiated between employers and employees, rather than being mandated by government regulation.

6. The measure will result in economic harm. Tourism and restaurant business will decline and the state's effort to develop stronger economic ties with Pacific Rim nations where smoking among businessmen is prevalent will be hindered.
7. Enforcement will be difficult. There are many uncertainties about the definition of a public place. Enforcement responsibility will fall to employers and other businesses.
8. The measure does not address many areas, such as homes, where the impact of involuntary smoking would be greatest.
9. The measure goes too far by including provisions that regulate the activities of people in the privacy of their own homes.
10. Many restaurants and other businesses have made investments in remodeling and ventilation improvements to provide smoke-free environments for non-smoking patrons while allowing smoking patrons to smoke. These investments would be wasted if the measure is passed.

V. MAJORITY DISCUSSION

Your Committee heard testimony on many issues, including public health, economics, and individual rights. Your Majority believes that the health issue is the most important. Involuntary smoking is a preventable health risk. Studies show that between 500 to 5,000 premature lung cancer deaths nationwide result each year from involuntary smoking.⁵ Other evidence presented to your Committee indicates that these figures may significantly understate the health risk. The actual number of deaths linked to involuntary smoking may be much higher, and involuntary smoking has been linked to other forms of cancer, and to respiratory and heart disease as well.

Publicity about the health impacts of smoking has significantly reduced the number of smokers in the state and limited the areas where smoking is permitted. However, there are many areas, particularly in the work place, where involuntary exposure to tobacco smoke is common. Many more businesses will implement smoking bans for patrons and employees over the next decade as the risks of involuntary smoking become known; however, this is likely to be a slow and haphazard process with a considerable amount of costly litigation involved. In the meantime, many more people will be unnecessarily exposed to serious health risks.

⁵ Cited in "EPA Study Links Deaths of Nonsmokers to Cigarettes," New York Times, November 3, 1984.

The impact of the 1981 law is perhaps most evident in restaurants, where patrons are now used to choosing between smoking and non-smoking sections. However, there is evidence that this system is not achieving its objective. Non-smoking areas of restaurants are still subjected to extremely high levels of airborne particulates. A study by the Multnomah County Health Department found that the level of respirable suspended particulates in non-smoking areas of restaurants was generally lower than the level in smoking areas, but still significantly higher than the level in restaurants which did not allow smoking at all. Measure 6 would improve this situation by eliminating smoking in restaurants entirely (although smoking would still be permitted in lounges and taverns which often share ventilation systems with adjoining restaurants).

The most far-reaching change from Measure 6 would be felt in the work place. Spurred at least in part by the impact of the 1981 law, many Oregon businesses have voluntarily implemented policies which prohibit or severely restrict smoking in the work place. Results of a survey by the Oregon Lung Association released in January, 1988 showed that 50% of the responding businesses in the Portland metropolitan area had banned smoking in the work place. The Association received about 300 responses to a survey mailed to a random sample of area businesses. Your Committee's research indicated that such policies have generally been developed through amicable negotiations between employers and employees and that implementation has generally been achieved with little difficulty. Passage of Measure 6 would mandate smoking prohibitions for nearly all work places.

Litigation of employer-employee disputes over smoking policies has been increasing. Some recent cases have been decided in favor of non-smoking employees, concluding that employers have a legal obligation to provide a safe work area which is free of harmful tobacco smoke. By enacting a consistent smoking policy into law, Measure 6 would eliminate this potential source of costly litigation. Passage of the measure would simply hasten a process which is likely to occur anyway, as more employees begin to express concerns about the risks of involuntary smoking and more employers begin to address concerns about potential liability.

In addition to achieving improvements in public health, proponents believe the measure will result in other benefits. Prohibiting smoking in the work place may result in more productivity, with less lost time for sickness by smokers and non-smokers alike, and fewer morale problems resulting from conflicts over smoking policy. Employers will not lose skilled employees who are particularly sensitive to smoke. In addition, there may be a long-term reduction in health care costs which will reduce medical and workers' compensation insurance premiums. Witnesses also told your

Committee that businesses which had banned smoking had lower costs for janitorial services.

It is also believed that passage of the measure will likely create one more incentive for smokers to quit and for young non-smokers not to start. Both supporters and opponents of the measure agree that smoking should be discouraged.

The existing Indoor Clean Air Act has been largely self-enforcing, and it is expected that this will remain the case if Measure 6 passes. Enforcement is expected to be in the form of responses by the State Health Division to complaints about violations, with no program of inspections and no involvement by police, prosecutors or the courts. Thus, implementation of the law should be inexpensive and non-confrontational.

Your Majority found little documentation to support the assertions made by opponents that tourists would stay away from Oregon, that restaurant business would decline, and that Asian business people would reduce contacts with the state.

Your Majority agrees with your Minority that some ambiguities exist in the language of the measure, particularly the definition of "public place." The law would apply to home work places which are used by the public, and those which are occupied by employees covered by state workers' compensation statutes. The measure does not define whether this applies to the entire home, or only to that area which is open to the public or occupied by employees. As the law is implemented, these applications will have to be more clearly defined through legislative action or court challenges.

Your Majority is also concerned that the measure deletes the portion of the existing law which grants rule-making authority to the State Health Division. The rule-making procedures, if retained, could be used to clarify the requirements of the law. These shortcomings in the measure, however, do not alter the basic soundness of the rationale for enactment.

Opponents of the measure argue that the "rights" of smokers are being abridged. In legal terms, however, there is no "right to smoke" nor any "right to smoke-free air." Smoking has become widely regulated, with statutory smoking restrictions in place in 46 states. Although Measure 6 would place stricter limits on smoking than currently exist in other states, there is a clear precedent for regulating or prohibiting certain activities by individuals that create a health hazard for others. Existing laws on pollution, noise, driving, construction practices and work place safety are examples of such restrictions.

VI. MAJORITY CONCLUSION

Although passage of Measure 6 would undoubtedly impose hardships on smokers, this imposition is warranted by the health risk from involuntary smoking. The majority of your Committee believes that Measure 6 will merely speed up a process which would eventually result in smoking prohibitions in most public places. Recent research strongly supports a link between involuntary smoking and increased incidence of disease and death. Protection of the public from involuntary exposure to toxic air pollutants is a proper role for government regulation. Through passage of Measure 6, Oregon can once again be a national model for environmental protection legislation.

VII. MAJORITY RECOMMENDATION

The Majority of the Committee recommends a "Yes" vote on Measure 6 in the November 8, 1988 general election.

Respectfully submitted,

Scott Pratt
Andy Sommer
Bernice Tannenbaum
Ross Simmons, Chair

FOR THE MAJORITY

VIII. MINORITY DISCUSSION

A. Negative Effects of Measure 6

Measure 6 would completely dismantle the current Oregon Indoor Clean Air Act, which is working. The interests of smokers and non-smokers alike have been accommodated, resulting in a fair policy for both. Restaurants and businesses have spent hundreds of thousands of dollars in an effort to obey and implement the Oregon Indoor Clean Air Act. Your Minority found no convincing evidence that designated smoking areas in restaurants and public buildings were not working.

The new law would be an unnecessary intrusion by government into homes and businesses. It would remove employers' responsibility and right to manage policies for employees with respect to smoking. It would preclude the choice of private businesses, which are currently all-smoking, to continue to be so. There are no provisions for exceptions or waivers as are now provided by the current act. In other words, the new law would result in an inflexible system with no room for negotiation. It would place government in the role of regulating personal habits, which history has proven

simply will not work. While the bill is being promoted as a "health measure", opponents argue it is an anti-smoking effort.

The administration of the law would fall to the Oregon Health Division, but the measure does not provide specifics for administration, suggesting that the Health Division would invoke its own administrative procedures. While the proposed law has been described as "self-enforcing", this is a loose interpretation of such a stringent law. In truth, the first level of enforcement would have to be performed by managers and owners of businesses and public places.

Measure 6 would redefine "public place" to include most private businesses without setting limits as to what the term includes. As your Majority concedes, questions have already arisen as to its interpretation. The entire home could be a public place if a part of it was used as a workplace. "Public place" could include resident quarters of nursing homes; homes of the handicapped who require aides; homes of the self-employed where the public may come occasionally; homes that employ nannies; homes to the incarcerated and mentally ill; and vehicles that are owned by Oregon businesses. A measure this ambiguous should not be enacted.

B. Studies on Involuntary Smoking Are Inconclusive

The Minority agrees that there is mounting evidence as to the dangers of involuntary smoke in an enclosed environment to smokers and non-smokers alike. But there is considerable debate over what segments of the population are at risk and how many deaths are caused solely from involuntary tobacco smoke.

The Minority believes the populations most at risk from involuntary smoking are the spouses and children of smokers. Remedies for the non-smoker currently exist in the workplace (by increased pressure from non-smokers and established smoking policies) and in public buildings (by designated areas). But there are no remedies for the home, where smoke concentration levels are considerably higher than in the workplace and public buildings.

The Surgeon General's Report was based on studies done in the home. It concluded that the risk of a non-smoking spouse getting lung cancer increases when exposed to years of involuntary smoke, and that children may develop a higher frequency of respiratory ailments. There is no conclusive evidence that involuntary smoke alone is a cause of lung cancer or of heart disease, asthma, respiratory disease and other cancers in adults.

The Surgeon General did not estimate the number of lung cancer deaths per year because "better data on the extent and variability on involuntary tobacco smoke is needed to

estimate the number of deaths with confidence."⁶ Review of actual studies and current data confirms that a causal relationship between involuntary smoking and lung cancer has not been established and more research is needed.

The Multnomah County study, described by your Majority, attempts to prove that non-smoking areas in restaurants do not work. The analysis of this study is not complete. The high readings of particulates included dust, candle smoke, cooking foods, air movements and tobacco smoke, but the study did not identify what portion was tobacco smoke.

C. Economic Impact

The economic impact of the passage of Measure 6 is hard to estimate. Your Committee was told that the marketing of the new \$85 million Convention Center, and other facilities, would become more difficult and would face stiff competition from other states. The hospitality industry would be severely affected. Many events are contracted for two or more years in advance. The contracts that provided designated smoking areas may have to be renegotiated.

The Oregon Restaurant and Beverage Association strongly opposes Measure 6 because restaurants would be hurt financially by a ban on smoking. When the City of Beverly Hills banned smoking in public places in 1987, restaurant owners lost 30% of their business. The smoking ban hurt the restaurants so badly that the ordinance was rewritten to accommodate both smokers and non-smokers.

Your Committee was told, and your Minority has no reason to dispute, that adoption of this measure would have an adverse effect on dealings with Pacific Rim businessmen, a high percentage of whom smoke.

The economic benefits anticipated by the proponents with respect to insurance, health care costs and janitorial services are speculative and probably only would be realized if there were a totally smoke-free society.

D. Measure 6 is Unnecessary

The concept of smoking restrictions in the workplace has become more acceptable to employers as public attitudes about smoking have shifted. With increased pressure from non-smokers and recent court cases, employers, in their own interest, will establish smoking policies, separating smokers from non-smokers.

The proposed law does not provide for a transitional period, and would take effect 30 days after passage of the

⁶ The Health Consequences of Involuntary Smoking, A Report of the Surgeon General, 1986.

measure. Efforts to help employees adjust to a smoking policy takes more time than the one month the measure allows. Many employers have totally eliminated smoking in the workplace -- implementing these policies over a period of time. In addition to smoking policies, employers have provided cessation programs that include education campaigns to motivate workers to quit, and treatment programs, medical advice and incentives to encourage non-smoking.

IX. MINORITY CONCLUSION

The Minority concludes that Measure 6 is intrusive and severe. It supersedes the options of employers, and mandates behavior with respect to smoking.

The Minority concludes there is no causal relationship between involuntary smoking and lung cancer in adults.

The Minority agrees with The Oregonian's editorial on September 28, 1988, which states that "... eliminating separate smoker's lounges in the workplace or eliminating designated smoking areas in restaurants or other public areas where patrons go voluntarily and temporarily makes a legitimate concern a fetish."

The proposed measure is flawed. It dismantles the current Indoor Clean Air Act without providing for an appropriate and necessary framework for administration and waivers, and leaves in question the definition of the "workplace". Passing a bad bill is not in the best interest of Oregonians.

X. MINORITY RECOMMENDATION

The Minority of your Committee recommends a "No" vote on Measure 6 in the November 8, 1988 general election.

Respectfully submitted,

Marilyn Day
Kristi Halvorson
Dale Victor, Spokesperson

FOR THE MINORITY

Approved by the Research Board on October 6, 1988 for transmittal to the Board of Governors. Received by the Board of Governors on October 10, 1988 and ordered published and distributed to the membership for presentation and vote on October 28, 1988.

APPENDIX A

Persons Interviewed

Marshall A. Coba, Assistant Campaign Manger, Oregonians for Fair Choice
Lee Fehrenkamp, Executive Director, Exposition-Recreation Commission
Michael R. McCallum, Governmental Affairs Director, Oregon Restaurant and Beverage Association
Rod Monroe, State Senator
Robert Neely, Chairman, Cleaner Indoor Air for Oregonians
Gerry Osidio, American Lung Association of Oregon
Gene Saylor, State Representative
Joe Weller, State Director, American Lung Association of Oregon

APPENDIX B

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